

DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLIC HEALTH SERVICE FOOD AND DRUG ADMINISTRATION DETENTION NOTICE		1. DISTRICT ADDRESS, PHONE NUMBER, NAME OF DISTRICT DIRECTOR 850 Third Ave. Brooklyn, NY 11232 Thomas Gardine (718) 340-7000	
2. NAME OF CUSTODIAN TO: Mr. William Jantz		3. DETENTION NOTICE NUMBER DN 60006	
4. TITLE OF CUSTODIAN Warehouse Manager, Division II		5. TELEPHONE NO. 716- 843-7066	
7. FIRM NAME Amoure Cold Storage Co., Inc.		6. DATE AND HOUR DETAINED 1-30-99	10:45 a.m. p.m.
8. ADDRESS (Street, City, State, ZIP code) 245 Dockage St. Buffalo, NY 14206		9. MAXIMUM DETENTION Twenty (20) _____ DAYS	
Pursuant to Sections 402 and 409(b) of the Federal Meat Inspection Act; Sections 19 and 24(b) of the Poultry Products Inspection Act; Sections 19 and 23(d) of the Egg Products Inspection Act; or Section 304(g) of the Federal Food, Drug, and Cosmetic Act, the merchandise listed below is hereby detained for the period indicated and must not be used, moved, altered or tampered with in any manner during that period (except that device may be moved and processed under 21 CFR 800.55(h)(2) pursuant to Section 304(g)(2)(B) of the latter Act) without the written permission of an authorized representative of the Secretary of the U.S. Department of Health and Human Services.			
10. NAME OF DETAINED ARTICLE Beefy Brand Beef Pot Pie with Mushrooms		11. SIZE OF DETAINED LOT 1600cs/24 – 1 lb. 2 oz tins	
12. DETAINED ARTICLE LABELED (Include Master Carton Label) Tins lbl'd in part "Beefy Brand Pot Pie***ingredients: Selected beef, choice green peas, carrots, selected Idaho potatoes, Mushrooms***Gravy***1 lb. 2 oz.***Packed by Burly Products Co.***Kansas City, MO EST 223" Tins in cs lbl'd similarly.			
15. REASON FOR DETENTION Estimated 10% of tins swelled and/or leaking.		16. DETAINED ARTICLE STORED AT (Name, Address, ZIP code) Amoure Cold Storage Co., Inc. Warehouse 3B, 321 Dockage St. Buffalo, NY 14206	
Sections 402 and 409(b) of the federal Meat Inspection Act is quoted below: <p>“Sec. 402. Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to Title I or II of this Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of Title I of this Act or of any other Federal law or the laws of any State or Territory or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under Section 403 of this Act or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until release by such representative. All official marks may be required by such representative to be removed from such article or animal before it is released unless it appears to the satisfaction of the Secretary that the article or animal is eligible to retain such marks. (21 U.S.C. 672.)</p> <p>Sec. 409.</p> <p>(b) The detainer authority conferred by Section 402 of this Act shall apply to any authorized representative of the Secretary of Health and Human Services for purposes of the enforcement of the Federal, Food, Drug, and Cosmetic Act with respect to any carcass, part thereof, meat, or meat food product of cattle, sheep, swine, goats, or equines that is outside any premises at which inspection is being maintained under this Act, and for such purposes the first reference to the Secretary in Section 402 shall be deemed to refer to the Secretary of Health and Human Services. (21 U.S.C. 679)”</p> <p>Sections 19 and 24(b) of the Poultry Products Inspection Act is quoted below:</p> <p>“Sec. 19. Whenever any poultry product, or any product exempted from the definition of a poultry product, or any dead, dying, disabled, or diseased poultry is found by an authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution in, commerce or otherwise subject to this Act, and there is reason to believe that any such article is adulterated or misbranded and</p> <p>(Continued on the reverse of this form)</p>			
NAME OF FDA EMPLOYEE (Type or Print) Sylvia A. Rogers		TITLE (FDA Employee) Investigator	
		SIGNATURE (FDA Employee) <i>Sylvia A. Rogers</i>	

is capable of use as human food, or that it has not been inspected, in violation of the provisions of this Act or of any other Federal law or the Laws of any State or Territory, or the District of Columbia, or that it has been or is intended to be, distributed in violation of any such provisions, It may be detained by such representative for a period not to exceed twenty days, pending action under Section 20 of this Act or notification of Any Federal, State, or other governmental authorities having jurisdiction over such article or poultry, and shall not be moved by any person, from The place at which it is located when so detained, until released by such representative. All official marks may be required by such representative To be removed from such article or poultry before it is released unless it appears to the satisfaction of the Secretary that the article or poultry is Eligible to retain such marks."

Sec. 24.

"(b) The detainer authority conferred by Section 19 of this Act shall apply to any authorized representative of the Secretary of Health and Human Services for purposes of the enforcement of the Federal Food, Drug and Cosmetic Act with respect to any poultry carcass, or part or product thereof, That is outside any official establishment, and for such purposes for first reference to the Secretary in Section 19 shall be deemed to refer to the Secretary of Health and Human Services."

Sections 19 and 23(d) of the Egg Products Inspection Act is quoted below:

"Sec. 19. Whenever any eggs or egg products subject to the Act, are found by any authorized representative of the Secretary upon any premises and there is reason to believe that they are or have been processed, brought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this Act or that they are in any other way in violation of this Act, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the Secretary, such articles may be detained by such representative for a reasonable period but not to exceed twenty days, pending action under Section 20 of this Act or notification of any Federal, State, or other governmental authorities having jurisdiction over such articles and shall not Be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the Secretary That the articles are eligible to retain such marks."

"Sec. 23(d). The detainer authority conferred on representatives of the Secretary of Agriculture by Section 19 of this Act shall apply to any authorized representative of the Secretary of Health and Human Services for the purposes of paragraph (d) of Section 5 of this Act, with respect to any eggs or egg products that are outside any plant processing egg products."

Section 304(g) of the Food, Drug and Cosmetic Act is quoted below:

"(g)(1) If during an inspection conducted under Section 704 of a facility or a vehicle, a device which the officer or employee making the inspection has reason to believe is adulterated or misbranded is found in such facility or vehicle, such officer or employee may order the device detained (in accordance with regulations prescribed by the Secretary) for a reasonable period which may not exceed twenty days unless the Secretary determines that a period of detention greater than twenty days is required to institute an action under Subsection (a) or Section 302, in which case he may authorize a detention period of not to exceed thirty days. Regulations of the Secretary prescribed under this paragraph shall require that before a device may be ordered detained under this paragraph the Secretary or an officer or employee designated by the Secretary approve such order. A detention order under this paragraph may require the labeling or marking of a device during the period of its detention for the purpose of identifying the device as detained. Any person who would be entitled to claim a device if it were seized under Subsection (a) may appeal to the Secretary A detention of such device under this paragraph. Within five days of an appeal of a detention is filed with the Secretary, the Secretary Shall after affording opportunity for an informal hearing by order confirm the detention or revoke it.

"(2)(A) Except as authorized by subparagraph (B), a device subject to a detention order issued under paragraph (1) shall not be moved by any person from the place at which it is ordered detained until -

"(i) released by the Secretary, or

"(ii) the expiration of the detention period applicable to such order, whichever occurs first.

"(B) A device subject to a detention order under paragraph (1) may be moved -

"(i) in accordance with regulations prescribed by the Secretary, and

"(ii) if not in final form for shipment, at the discretion of the manufacturer of the device for the purpose of completing the work required to put it in such form."

Section 800.55(g)(1)-(2) of Title 21, Code of Federal Regulations, is quoted below as notice of opportunity for appeal and a regulatory hearing:

"(g) **Appeal of a detention order.** (1) A person who would be entitled to claim the devices, if seized, may appeal a detention order. Any appeal shall be submitted in writing to FDA District Director in whose district the devices are located within 5 working days of receipt of a detention order. If the appeal includes a request for an informal hearing, as defined in Section 201(y) of the Act, the appellant shall request either that a hearing be held within 5 working days after the appeal is filed or that the hearing be held at a later date, which shall not be later than 20 calendar days after receipt of the detention order.

(2) The appellant of a detention order shall state the ownership or proprietary interest the appellant has in the detained devices. If the detained devices are located at a place other than an establishment owned or operated by the appellant, the appellant shall include documents showing that the appellant would have legitimate authority to claim the devices if seized."

Any informal hearing on an appeal of a detention order shall be conducted as a regulatory hearing under 21 CFR Part 16, with certain exceptions Described in 21 CFR § 800.55(g)(3).

DEPARTMENT OF HEALTH AND HUMAN SERVICES PUBLIC HEALTH SERVICE FOOD AND DRUG ADMINISTRATION DETENTION NOTICE		1. DISTRICT ADDRESS, PHONE NUMBER, NAME OF DISTRICT DIRECTOR 850 Third Ave. Brooklyn, NY 11232 Thomas Gardine (718) 340-7000	
2. NAME OF CUSTODIAN TO: Mr. William Jantz		3. DETENTION NOTICE NUMBER DN 60006	
4. TITLE OF CUSTODIAN Warehouse Manager, Division II	5. TELEPHONE NO. 716- 843-7066	6. DATE AND HOUR DETAINED 1-30-99	10:45 a.m. p.m.
7. FIRM NAME Amoure Cold Storage Co., Inc.		9. MAXIMUM DETENTION Twenty (20) _____ DAYS	
8. ADDRESS (Street, City, State, ZIP code) 245 Dockage St. Buffalo, NY 14206			
Pursuant to Sections 402 and 409(b) of the Federal Meat Inspection Act; Sections 19 and 24(b) of the Poultry Products Inspection Act; Sections 19 and 23(d) of the Egg Products Inspection Act; or Section 304(g) of the Federal Food, Drug, and Cosmetic Act, the merchandise listed below is hereby detained for the period indicated and must not be used, moved, altered or tampered with in any manner during that period (except that device may be moved and processed under 21 CFR 800.55(h)(2) pursuant to Section 304(g)(2)(B) of the latter Act) without the written permission of an authorized representative of the Secretary of the U.S. Department of Health and Human Services.			
10. NAME OF DETAINED ARTICLE Beefy Brand Beef Pot Pie with Mushrooms		11. SIZE OF DETAINED LOT 1600cs/24 – 1 lb. 2 oz tins	
12. DETAINED ARTICLE LABELED (Include Master Carton Label) Tins lbd in part “Beefy Brand Pot Pie***ingredients: Selected beef, choice green peas, carrots, selected Idaho potatoes, Mushrooms***Gravy***1 lb. 2 oz.***Packed by Burly Products Co.***Kansas City, MO EST 223” Tins in cs lbd similarly.		13. APPROXIMATE VALUE OF LOT \$19,000.00	
		14. SAMPLE NUMBER 55566	
15. REASON FOR DETENTION Estimated 10% of tins swelled and/or leaking.		16. DETAINED ARTICLE STORED AT (Name, Address, ZIP code) Amoure Cold Storage Co., Inc. Warehouse 3B, 321 Dockage St. Buffalo, NY 14206	
17. NAME AND ADDRESS OF ARTICLE OWNER Big Midget Food Chains General Offices – Chicago, Illinois Local Agent – Big Midget, Division 132 2234 Lake drive, Buffalo, NY 14238		18. NAME AND ADDRESS OF INITIAL SHIPPER OR SELLER Burly Products Co. 1921 Packer Avenue Kansas City, MO 64309	
19. NAME AND ADDRESS OF SUBSEQUENT SHIPPERS OR SELLERS (Continue in Remarks, if necessary) Big Midget Food Chains, Chicago, IL, lot shipped by Burly from KC to Chicago to Big Midget Warehouse 1 st & 2 nd Ave. Then shipped by Big Midget to Amoure, Buffalo.		20. NAME OF CARRIERS KC to Chicago via Overland Transport, KC, MO Chicago to Buffalo via IS Cartage, Chicago	
		21. DATE LOT SHIPPED 1-13-99 to Chicago; 1-20-99 to Buffalo	
22. NAME AND ADDRESS OF PACKING PLANT Burly Products Co., Inc. 1921 Packer Avenue Kansas City, MO 64309		23. DATE LOT RECEIVED 1-23-99 in Buffalo	
		24. PACKING PLANT USDA NO. EST 223	
25. DESCRIPTION OF SAMPLE Sample consists of 2 cs/24/1 lb. 2 oz. tins taken at rate of 2 tins from each of 24 previously unopened cases selected at random from the lot. Of the 48 tins taken, 24 were swollen to some degree and 12 of these were leaking. The other 24 were normal.			

24. REMARKS *(List any recommendations made to custodian for special storage requirements, i.e., refrigeration, frozen, etc.)*

Entire lot was removed from initial location at Amoure Cold Storage Warehouse #2A, 245 Dockage St. to same firm's warehouse #3B at 321 Dockage St., Buffalo, NY, where detention was placed in effect.

NAME OF FDA EMPLOYEE *(Type or Print)*

Sylvia A. Rogers

TITLE *(FDA Employee)*

Investigator

SIGNATURE *(FDA Employee)*

Sylvia A. Rogers

FORM FDA 2289 (11/89)

PREVIOUS EDITION MAY BE USED

DETENTION NOTICE 3